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In the United States Court of Appeals
For the Seventh Circuit

No. 11906

UNILECTRIC, INC., by change of name from UNITED MFG. AND SERVICE CO., Plaintiff-Appellant, vs. HOLWIN CORPORATION, Defendant-Appellee.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. Honorable Win G. Knoch, District Judge.

APPENDIX TO APPELLEE'S BRIEF.

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The Scheffer Press, Inc.—ANdover 3-6850

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APPENDIX.

E. EUGENE KOHLS, called as a witness herein on behalf of the plaintiff.

41 • • •

Cross Examination by Mr. McKnight.

Q. Mr. Kohls, what are your qualifications as an expert witness to testify in this case? I do not think that was brought out very thoroughly in the direct examination.

Maybe you want to have the opportunity of telling us what your qualifications are besides being a pat-
42 ent attorney.

A. Well, besides being a patent attorney, I do not know what I would give as qualifications to testify in a patent suit.

Let me say that I began in the patent profession as a draftsman, and although I hold no degree in electrical or mechanical engineering, or for that matter any engineering, I do feel that the background I have had gives me the ability to understand things mechanical.

I have a natural inherent ability in that direction, and of course, I have prepared and prosecuted many patent applications, which of itself would have required a thorough understanding and knowledge of patent practice.

Q. But you have no formal education resulting in an electrical or an engineering degree?

A. No, I do not, sir.

• • •

Q. Well, now, have you, as Mr. Jones has suggested, testified in patent litigation before?

43 A. Yes, I have.

Q. In a number of cases?

A. Quite a number of cases.

Q. On behalf of cases in your own office, or in connection with Mr. Jones' office?

A. Perhaps they have been limited to cases that have arisen in connection with our office, or in which the office had a part.

Q. And you are working now for Mr. Jones, attorney for the Plaintiff in this case?

A. Yes.

Q. Have you ever had any experience in electrical or electric light sockets, or sockets for refrigerators, other than your work in doing patent work in your office?

A. Well, if the question pertains to experience with sockets restricted solely to refrigeration, I would have no direct experience, no.

Q. Well, the answers you have given this morning on direct examination are your own opinions, are they not?

A. Yes.

Q. Now, I call your attention to Plaintiff's Exhibit A-1, which I understand is the socket that is
44 made in accordance with the Holloway Patent. Is that correct, Mr. Jones?

Mr. Jones: Yes; the one on which we have paid royalties.

Mr. McKnight: Yes.

The Witness: Yes.

By Mr. McKnight:

Q. Are you familiar with how this operates? Have you seen it in action?

A. I have not seen it in action, if "action" means actually installed in a refrigerator with the socket inserted—I mean, with the lamp inserted into it and connected up. I have not seen that.

Q. But you are familiar with the theory of how it is to operate and function when installed?

A. Yes.

Q. I call your attention to Plaintiff's Exhibit B-1, which is the present United structure.

A. Yes.

Q. How do A-1 and B-1 resemble each other as far as function is concerned?

A. The two—

45 Q. Do they function the same?

A. The two sockets you have identified and referred to have the same general function of supporting an electric lamp, receiving an electric lamp, and of being secured in an aperture or opening in a supporting panel.

Q. Now, do they produce the same result?

A. They produce the same result to the extent that they both provide means for securement of the socket to the panel, and of course, support the lamp.

Q. Referring to Claim 3 of the Holloway Patent in suit, concerning which you testified this morning, do you know whether or not that Claim 3 as now appears in the Patent was ever rejected by the Patent Office?

A. From my examination of the File Wrapper of the Holloway Patent, I would have to answer that I do know that that particular claim was not rejected, there having been a rewritten version of original Claim 3, I believe it is, of the Patent.

Q. The Claim 3 that you testified about this morning was allowed by the Patent Office after its filing and without rejection as far as your memory serves you, is

46 that not correct?

A. Yes. It probably was allowed as a result of the argument made to the Examiner.

* * *

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WILLIAM PUETZ, called as a witness herein on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. McKnight.

Q. Will you please state your name?

A. William Puetz.

• • •

Q. Will you give your address, Mr. Puetz?

A. 7726 North Haskins, Chicago, Illinois.

Q. What is your occupation?

A. Mechanical engineer.

Q. What was your formal education with regard to being a mechanical engineer, starting with your high school education?

A. I attended Lane Technical High School here in Chicago for four years. I attended the Extension Division of Northwestern University, Midwestern Technical Institute, the University of Maryland at Baltimore, and A.S.T.P. Program given by the United States Army during the war.

Q. Was your education interrupted at the University of Maryland?

A. Yes, it was.

Q. What was the occasion for that?

A. To go overseas; to leave the United States.

Q. How long were you in the Army?

A. Three years and two months.

Q. When you came out of the Army what job did you get at that time?

A. My first job was with the Bagley Filling Machine Company in Evanston as their plant superintendent.

Q. What kind of work did you do there and what kind of work did they do?

A. Well, they were manufacturers and designers of special filling machines, chemical filling machines.

Q. Where did you next work?

A. At H. S. Martin Company in Evanston. We were in scientific apparatus there.

Q. What did you do there?

A. I was essentially a product development and design engineer.

Q. Where did you go next?

A. To W. M. Welch Manufacturing Company in Chicago.

Q. What kind of work did they do?

A. Scientific apparatus, special mechanical apparatus and special devices for the Atomic Energy Commission.

Q. What did you do next?

A. From there I went to the Holwin Corporation.

Q. That is the Defendant in this case?

A. Yes.

Q. How long were you with the Holwin Corporation?

A. Approximately two years.

Q. Are you with them at the present time?

A. No, I am not.

Q. Who are you with at the present time?

A. Crane Packing Company in their Morton Grove Division.

Q. During your period with Holwin Corporation did you have an opportunity to study and become familiar with electric light sockets for refrigerators?

A. Yes, I did.

Q. Do you know whether electric light sockets were manufactured by the Holwin Corporation?

A. Yes, they were.

Q. I show you Defendant's Exhibit 1, and ask you if that is a product of the Holwin Corporation?

* * *

A. Yes, it is.

• • •

72 • • •

Q. Was the sale of the light sockets for refrigerators extensive during the period that you were there?

A. Yes, it was.

Q. Have you any idea of the sales of said sockets?

73 A. Well, in excess of a million, I would say.

Q. Do you know any of the customers that purchased these sockets from Holwin Corporation?

A. Seeger Refrigerator Corporation, Westinghouse Electric, Admiral Corporation—

• • •

Westinghouse Electric Deep Freeze in West Chicago. I think some of this particular type went to Admiral during that period; I am not quite sure. Also Westinghouse, as I previously mentioned.

• • •

Q. Have you studied the Holloway Patent in suit, No. 2,460,636?

A. I have seen this patent.

Q. Calling your attention to Plaintiff's contemporary socket, Exhibit G, I will ask you if you have ever

74 seen that before?

A. I have seen this socket before.

Q. Calling your attention to Defendant's Exhibit O, I will ask you whether or not the following elements appear, reading from Claim 3 of the Holloway Patent, 2,460,636:

Does Exhibit O show:

"An electric light socket for refrigerator panels"?

A. Yes, it does.

Mr. Jones: If the Court please, I would like to show

a running objection to this line of examination as being incompetent.

• • •

75 The Court: The objection is noted. Proceed.

By Mr. McKnight:

Q. I will ask you whether or not, reading from Claim 3, Defendant's Exhibit O comprises:

" . . . an outer flexible housing having a hollow interior with a front opening adapted to receive an electric light bulb . . . "?

A. Yes, it does.

Q. Does it have:

" . . . means for connecting said socket to a suitable source of electrical supply . . . "?

A. Yes, it does.

Q. Does it have:

" . . . a continuous flange extending around the outside of said housing to form a non-circular shape . . . "?

A. By "outside" you mean again this portion which extends within the inner part here (indicating)?

Q. Yes; that is right. The outside.

A. Yes, it does.

Q. Does Defendant's Exhibit O have:

" . . . a plurality of shorter flanges extending partially around the outside of said housing and spaced
76 slightly from said continuous flange on a corresponding line . . . "?

A. Yes, it does.

Q. Does Defendant's Exhibit O have the following characteristics:

" . . . said socket adapted to be installed without the use of tools in a single non-circular opening in a refrigerator panel corresponding in shape to the shape of said housing between said flanges so that

said flanges grip the edges of the opening and hold the edges in the space between said continuous flange and said shorter flanges, so that said socket may not be accidentally turned and said continuous flange contacts the face of the refrigerator panel around the entire circumference of the opening to provide a moisture-proof seal around said opening"?

A. Yes, it does.

Q. Now, I call your attention to Defendant's Exhibit 1 and to the flanges appearing upon the outside of the ice box panel.

A. Yes.

Q. Will you state how many flanges appear there?

77 A. There are four flanges.

* * *

Q. You are referring to the fact there are four flanges on the socket—

A. Yes. Four flanges—

Q. —is that right?

A. —on the socket, and also plainly visible as gripping the panel or physically on the panel.

Q. Yes.

A. I understood the question.

Mr. McKnight: May I show this to you, your Honor?

The Court: Yes.

(Mr. McKnight exhibited a socket to the Court.)

Mr. McKnight: That is the socket which is made

78 exactly in accordance with the embodiment shown in the Patent.

The Court: You may proceed.

By Mr. McKnight:

Q. Now, calling your attention to Defendant's Exhibit O, I will ask you how many flanges appear upon the rear side of this socket; and by that I mean the side that is

on the outside of the ice box in the same position as the socket was positioned in Exhibit 1? Do you understand what I mean?

A. Yes.

Q. How many flanges would you say there are there?

A. I see two flanges.

Q. Would you explain to the Court what you mean by that answer?

A. Well, I think the only way I can qualify this answer is that generally in the design of both tools and sockets, of which I have designed a number very similar, with a number of single-cavity experimental molds, it is very common practice to refer to these flanges as such as actual embossments, and in constructing such a mold 79 it would become a job of producing more than one to create a flange, and that is what appears to me here as an upper and a lower flange or embossment, and as the two lie on a common perimeter they are adjacent to one another and not, therefore, connecting, so to qualify my statement I see both an upper and a lower flange.

Q. Now, holding the socket with the electrical-receiving element upwardly, which do you refer to as the upper part of the flange? That (indicating), is that correct, or do you have it in the opposite direction?

A. Well, it mounts in the refrigerator usually this way (indicating).

Q. With the socket going downwardly?

A. Yes.

Q. Is that correct?

A. Yes.

Q. So that you refer to the flange above—or rather, the groove above the bent-in portion as the upper flange?

A. As being upper.

Q. The upper flange?

A. Yes.

80 Q. And this flange down here (indicating) is the lower flange?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Now, can you explain to us why you think there are two flanges instead of one?

A. Well, again, as to the method of laying this thing out, if you were to make a drawing of this thing, or if you were to make a drawing of the tool to produce it, you would actually be laying out two of these embossments to create a flange, or two flanges, one upper and one lower.

Now, the toolmaker actually does the same thing when he builds a suitable tool to produce this. He thinks of these always as a number of projections or embossments in order to produce this flange effect.

As he has produced an upper flange and lower flange, or upper and lower embossments and blended them in, he has actually made two separate and distinct set-ups.

Generally speaking we at the Holwin Corporation, and I think generally throughout this industry, would

81 think of this as being two separate flanges.

Mr. Jones: I object to this witness trying to tell what the industry thinks. I think he should be confined to his own opinion, and I move to strike that portion of his answer.

The Court: It may be stricken.

By Mr. McKnight:

Q. Now, I call your attention to Plaintiff's Exhibit 4, which is a copy of the Hoard design patent—

Mr. Jones: Plaintiff's Exhibit 4?

Mr. McKnight: I beg your pardon. Defendant's Exhibit 4.

By Mr. McKnight:

Q. I call your attention to Defendant's Exhibit 4, which is a copy of the Hoard design patent, and call your attention to Fig. 1.

A. Yes.

Q. I ask you if you see two flanges there?

A. Based on what I have just said, yes.

Q. Based on Exhibit O?

A. Yes. I do.

Q. Is this substantially a picture of Exhibit O?

82 A. Yes, it is.

Q. Now, in Fig. 4 how many flanges do you see there on one side?

A. Again I see two flanges.

Q. On Fig. 5 how many flanges do you see?

A. I see the same two I could see in Fig. 4.

Q. As marked in pencil upon this patent?

A. Yes.

Q. Now, calling your attention to Exhibit O and to Exhibit 1, is there any difference in the function of these sockets?

A. No. They function identically.

Q. Is there any difference in their operation?

A. Not in their operation.

Q. Is there any difference in the result that they accomplish?

A. No.

Q. They are both the same?

A. Yes.

Q. Calling your attention to Plaintiff's Exhibit B, and particularly to the figure on the left hand side, I will ask you if that is an accurate photograph of Defendant's Exhibit O?

A. It is very obviously a photograph.

83 Q. What do you mean by that?

A. I think it is a photograph, but I think it shows

too many of the usual retouchings or highlightings, I think it is called in photography. To me it appears to be accurate with the exception of the hand highlighting. Have I answered the question?

Q. Yes. Does that highlighting hide to some extent the fact that there are a plurality of flanges rather than one?

Mr. Jones: That certainly is leading this witness right down the primrose path. I move that it be stricken.

The Court: It may be stricken.

By Mr. McKnight:

Q. Can you tell the Court—

Mr. Jones: I do not like to make objections of that type, but I think you went a little bit beyond the usual bounds.

By Mr. McKnight:

Q. Can you tell the Court in what way the highlighting affects the photographs?

A. Well, I think the highlighting definitely points out or has its lights on the flange, and it appears to me 84 from looking at this photograph that there is but one flange.

Q. Whereas if you look at Exhibit O, what is your conclusion?

A. That there are two.

* * * *

Q. Now, I call your attention to a copy of Plaintiff's Chart, Exhibit KK, and particularly to the figure at the right-hand corner.

A. Yes.

Q. I will ask you if you have filled in the color red on this document yourself?

A. Yes, I did.

Mr. McKnight: I will request the Court Reporter to mark this as Defendant's Exhibit 6.

85 (The Chart was thereupon marked as Defendant's Exhibit 6, for identification.)

By Mr. McKnight:

Q. I will ask you to explain the marking in red crayon that you have made on the figure at the right-hand side.

A. I have marked it in red again to show an upper and a lower flange, and in coloring it I brought it down to the part or the body which extends beyond the flange.

Q. You did that in both figures?

A. I did it in both views.

Q. Both Figs. 2 and 3?

A. Figs. 2 and 3.

Q. And you feel that that more definitely shows what Exhibit O shows?

A. Yes.

Q. Is that correct?

A. Yes.

Q. How many flanges would you say are shown there?

A. Two.

Q. Against an opposite flange on the other side?

A. Yes; against the opposite flange on the other

86 side.

Q. That is, there are two flanges on one side—

A. That's right.

Q. (Continuing)—and a single flange on the other side, is that correct?

A. Yes.

* * *

Mr. McKnight: Before Mr. Jones proceeds with his cross examination, I would like to offer in evidence Defendant's Exhibits O and 1 to 6, inclusive.

The Court: They may be received.

* * *

66 * * * Mr. McKnight: At this time I want to offer in evidence the deposition of Halbert W. Hoard, a discovery deposition taken on behalf of the Defendant in Milwaukee, Wisconsin on October 1, 1952.

May it be considered as read and offered in evidence, your Honor?

The Court: Yes. It may be so considered.

* * *

212 Deposition of HALBERT W. HOARD, taken on behalf of the defendant, pursuant to Rule 26 of the Federal Rules of Civil Procedure, on notice, * * * at the offices of Ira Milton Jones, 110 East Wisconsin Avenue, Milwaukee, Wisconsin, on Wednesday, October 1, 1952.

* * *

213 *Examination by Mr. Comstock.*

Q. What is your name?

A. Hoard, H-o-a-r-d, Halbert W.

Q. What is your address?

* * *

A. 1304 East Goodrich Lane of Milwaukee.

Q. What is your occupation?

A. What terminology do you want that? Do you want that manufacturing? I am president of the United Mfg. & Service Corp.

Q. Is that the plaintiff in this case?

A. Yes.

Q. How long have you held that office?

214 A. Since the company was incorporated. I think that was September 1, 1944.

Q. What is the nature of its business?

A. Electrical manufacturing.

Q. What products does your company manufacture?

A. Principally electrical wiring systems. That is the terminology we use. Other terminology includes wiring harnesses, wiring assemblies, cable assemblies. That is our principal production.

Q. Do you manufacture sockets for electric refrigerators?

A. Yes.

Q. Have you ever heard of the Holwin Corporation, the defendant in this case?

A. Yes.

Q. When did you first hear of them?

A. Well now, that would be hard to determine. I would say it would be in the year 1946, as I would guess at that.

Q. I show you a refrigerator socket, which I will ask the reporter to mark for purposes of identification as Defendant's Exhibit 1, and ask if you recognize this socket?

A. Well, I have seen sockets similar to that. There are several on the market more or less similar.

215 Q. When did you first see this particular type of socket?

A. You mean an actual socket, or do you mean drawings for one?

* * *

Q. When did you first see the socket itself?

A. Well now, which socket are you referring to? Any socket of that type?

Q. The Holwin socket. When did you first see the Holwin socket?

216 A. Now, I don't suppose—let me stop and think. I may not have seen the Holwin socket until—it might have been some time in '48 or '49.

Q. Did you know that Holwin was manufacturing these sockets for Westinghouse?

A. Yes, according to this letter here. As a matter of

fact, now that I think, I may or may not have seen one of the Holwin sockets in 194 — when was that, 1947 or '48 when we quoted on this job to Westinghouse? I would presume it was late in 1947—I am not sure of that—that we were asked to quote on wiring harness for Westinghouse.

Q. Did your company ever manufacture any sockets like Defendant's Exhibit 1?

A. We manufactured a socket similar in certain respects, but dissimilar in others.

Q. What were the dissimilarities?

A. Well, internally we have an entirely different method of securing what is called a torque relief.

Q. What about the outside?

A. On the outside we manufactured a socket that was quite similar—not completely similar—for a period of time.

Q. To whom did you sell such sockets?

217 A. We sold those to Seeger Refrigerator Company.

Q. Of what city?

A. Evansville, Indiana.

Q. When did you first manufacture such a socket?

A. Depending upon what you consider the point of manufacture. Do you mean when we first delivered, or when we started?

Q. What was your first delivery date?

A. Now, I don't know that. I can give you a rough estimate that it might have been—I take a guess that it was in '48, the latter part of '48; or it might have been early '49. Now, I am uncertain there.

Q. For about what period of time did you manufacture those sockets?

A. I don't have records to indicate that.

Q. Were you familiar with the Holwin socket, Defendant's Exhibit 1, before you started manufacturing your socket of the same outer construction?

A. I was familiar with a design furnished to me

* * *

218 Q. Did you copy these specifications substantially?

A. Well, we did; we had to. * * * but later on, a number of months later—just how long after I don't have a record—we received blueprints from Seeger Refrigerator Company which showed specifications of a socket * * *.

Q. Did you see the name of Holwin, or Holwin Corporation on those specifications any place?

* * *

A. I do not recall if there was—yes, I beg your pardon. I am referring now to this letter again. There was a reference on the blueprint to the socket drawing as Holwin Part No. 4100.

* * *

220 Q. Did you ever see any prints for this type of socket, Defendant's Exhibit 1, which were made by Holwin Corporation?

A. Repeat that, please. If I understand you, you mean did we ever see any prints, the prints that were made by Holwin?

Q. That is correct.

A. Not to our knowledge; at least, not to my memory. The only prints we were supplied were those from the Seeger Refrigerator Company.

Q. When you were making sockets similar in outside construction to Defendant's Exhibit 1, how many molds did you have for making such sockets?

A. You mean what capacity mold?

Q. Well, let's have it that way then.

A. Well, I don't believe I could even answer that. I didn't concern myself with the technicalities there.

Q. You had only one mold physically with a certain capacity; is that correct?

A. That may be true. I don't recollect.

Q. Did you make the mold, or did you have it made for you?

221 A. We had it made for us.

Q. Did you mold the sockets yourself, or did you have them made for you?

A. They were made for us.

Q. Who made them for you?

A. Now, I will have to just kind of guess at that name. It is an outfit in Evansville, Indiana. It might be called Mid States Rubber Company, or something like that. I don't remember very distinctly.

Q. Did you own the mold, or did they own it?

A. Seeger owned the mold.

Q. Did they pay for the making of the mold?

A. That is right, to my recollection; I am quite certain.

Q. Did you ever try to sell those sockets to anyone other than Seeger?

A. Not the sockets. Well now, when you say "tried to," I don't know what efforts might have been made by anyone outside of my knowledge, but I am quite certain that the sockets made on that—the first mold, which had an exterior similarity to the Holwin socket—

Mr. Jones: (Interrupting) Defendant's Exhibit 1.

222 A. (Continuing) —Defendant's Exhibit 1, I am quite certain that none was sold to anyone except Seeger.

Mr. Comstock:

Q. Would Seeger have permitted you to manufacture them for others using their mold?

A. They gave us permission, on a later mold that was made on other specifications, to do that. Whether they had given us permission on this particular design, I do not recall.

Q. When did you first learn of Holloway & Holwin Patent No. 2,460,636 on self-sealing electric light socket for refrigerator panels?

A. When I first heard of it would be shortly subsequent to receipt—pardon me, upon receipt of letter from McKnight & Comstock dated April 12 in 1949.

Q. Subsequent to learning of this patent, did you start the construction of a new mold to make similar sockets with a slightly different outside construction?

A. Between the dates of April 12, 1949, and September 16, 1949, we either revamped the old mold or made a new mold to make a socket of different specifications from the Holwin socket.

223 Q. When did you start to either make or revamp that mold?

A. I would say within approximately 30 — 60 days of the receipt of the notice.

Q. Do you remember who did the work for you on that mold?

A. It would have been the same molding company as made the first one.

Q. Did you pay for the newer revamped mold, or did Seeger pay for it?

A. I do not recall.

Q. Did you make a change in the flanges on the outside of the socket?

A. Yes.

Q. Who suggested that change?

A. You mean what individual?

Q. Yes.

A. Well, I don't recall. It came out of a conference we had as to what procedures to take in the matter. I don't recall who particularly made that suggestion.

Q. What do you mean by "we"? In referring to the conference, you said "we" had a conference. Who was in on that conference?

224 A. Well, as to individuals I don't recall exactly. There were engineers probably, myself undoubtedly;

very possibly the sales manager, very possibly—undoubtedly two or three engineers, but as to which ones I don't recall.

Q. Was the change in the flange construction your idea?

A. Personally my idea?

Q. Yes.

A. Well now, that would take about the same answer as the last one. It was a problem, a necessity as to what we could do, because we were faced with the fact of a notice of infringement and we had the choice of either finding a way out of it or dropping the product, so the idea came out of the conference as to what to do. Many ideas were discussed. I don't recall who came up with this particular one. Inasmuch as the flanges were involved principally in the patent, that was the principal subject of change, of course.

Q. The idea was the result of the conference then, and not your individual idea; is that correct?

A. I think so.

225 Q. Did that change affect the functioning of the socket in any way?

A. Well, it is a matter of opinion. It wouldn't change the functioning of the socket in any way.

* * *

Q. The new type of socket which you are referring to is the one which is marked Plaintiff's Exhibit O; is that correct?

A. That seems to be it.

Q. Now, referring to that new type of socket, Plaintiff's Exhibit O, does that go into the same opening in the refrigerator wall as the type of socket which you made before that?

A. Well, I am quite certain that it did.

Q. Do the flanges grip the edges of the opening in the

refrigerator wall between them in the same manner as the old socket?

A. Well, it being a continuous flange rather than four separate flanges, it grips them in a little different man-
226 ner, but, of course, it grips—I presume it grips depending upon the thickness of the wall, which varies in various refrigerators. * * *

Q. At the time you changed to making the new type of socket, was your company a licensee under the Holwin patent?

A. Yes.

Q. Was your purpose in making the new type of socket to avoid the payment of royalties which you were making on the old type of socket?

A. Well, the purpose was probably two-fold: One was to get out from under the—or to avoid infringing on a patent; and the other was to, if possible, improve on the application—that is, the installation of the socket, if possible.

Q. Did you ever file an application for patent on the type of socket which you are now making?

A. We filed an application for a design patent.

Q. When was that filed?

A. July 15, 1949.

Q. Was that filed in your individual name as inventor?

A. Yes.

227 Q. Did that application result in the issuance of Design Patent No. 156,730 on January 3, 1950?

A. Yes.

Q. You were familiar with the Holwin socket before you filed that application for patent, were you not?

A. Oh, yes.

Q. Had you known about sockets like Defendant's Exhibit 3 for more than a year before you filed this application for design patent?

A. I think so; yes.

Q. Were you the inventor of the design shown in Design Patent No. 156,730?

A. As mentioned before, that came out of a conference. For a matter of convenience, it was issued—it was filed in my name. It was company property, in any event.

Q. Now, referring to this design patent and comparing it with Defendant's Exhibit 1, what differences are there in appearance?

A. You mean between our socket and the Holwin socket?

Q. That is right.

A. Well, there is a considerable difference in the length of the body. There are differences—of course, the prin-
228 cipal constructional differences lies in the fact that there are two continuous flanges on our socket, and there is one continuous flange on one side of the Holwin socket and four separate, spaced flanges on the other side.

Q. Now, when you refer to considerable difference in length, that is a difference of a fraction of an inch; is that correct?

A. That is a difference of a fraction of an inch, but in terms of the length of the unit it is quite a proportionate difference.

Q. Now, comparing the design patent with Defendant's Exhibit 1, the only difference in the appearance of the two is in the construction of the one bottom flange assembly; is that correct?

A. Well, that is the principal difference; the difference in its overall shape in terms of variation in length as related to width, the diameter.

Q. And those are the only differences between them?

A. Let me just see. Of course, as a result of the difference in length—I mean as a cause of the difference in
229 length the body itself is shorter, but the flange extends up to approximately the same length. I see no other

primary differences there.

Q. Why did you file this application for design patent?

A. Well, we have a policy of filing for patents on any components that we design as a matter of course. Sometimes they are allowed, and sometimes they are not.

Q. You knew about the Holwin Patent No. 2,460,636 before you filed that application, didn't you?

A. Yes.

Q. Do you recall signing the application for this design patent?

A. I don't recall it, no. It is a matter of record whether I did or not. I presume I possibly did.

Q. Are you familiar with the contents of the oath which is signed when you file an application for design patent, or patent?

A. I didn't know there was one.

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231 Q. Does your Design Patent No. 156,730 show the socket you are now manufacturing?

A. Substantially, yes.

Q. Is that the socket that you have manufactured continuously since you stopped paying royalties to Holwin?

A. Yes, we have been manufacturing that more or less continuously.

Q. To whom are you selling that type of socket at the present time?

A. I do not have detail information as to who we
232 are selling wiring harnesses using the socket. I believe we have sold some of them to Gibson Refrigerator Company, Sanitary Refrigerator Company, and I believe others, but I cannot recall any other names.

Mr. Jones: Let the record show that is in addition to the Seeger Refrigerator Company.

A. Oh, yes; that is in addition to the Seeger Refrigerator Company.

Mr. Comstock:

Q. Referring now to Fig. 1 of this Design Patent No. 156,730, the flange to which I am pointing, and which I will call the top flange, is continuous; is that right?

A. Yes.

233 Q. And there is a point about the end of the socket where the rounding stops and the flat part begins; is that correct?

A. Yes. The rounding sort of gradually decreases to a point of level plane.

Q. Is that shown on Fig. 1 of the Design Patent at this point?

A. Well, I think it is shown there, although the method of drawing may not be as clear as the sample itself. I think Fig. 5 clarifies that pretty well, or better. I don't think it clarifies it completely.

234 Q. How many molds do you have for the manufacture of your present type of socket, Exhibit O?

A. I am not sure I know for certain, but I believe we have two molds for that.

Q. Did you build the second one yourself, or was that also paid for by Seeger?

A. To the best of my recollection, we own that mold.

Q. Can you recall about when you built that mold?

A. I don't think that I could recall even to the year.

Q. Was it made by the same concern, that is, Mid States Rubber in Evansville?

235 A. Again, it is my belief, although I do not know for certain, that it was made by another company. The mold is in the hands of another company, but it may have been made originally by the same company.

Q. In whose hands are your molds at the present time?

A. I would have to call my office to find that out. They have been shifted around several times, and I don't have any idea who has got it. It might be in one of three companies.

I have since called the office, and I find one mold is with the Mid States Rubber Company at Evansville, Indiana, and the other is with the Radiator Specialty Company at Charlotte, North Carolina. I also learned that the second mold was made by Firestone Tire & Rubber Company.

Q. Have you or anyone connected with your company ever discussed the Holwin patent with any third party; that is, anyone outside of your company or attorneys?

A. Well, I can't speak for what other people have been doing.

Q. Have you, yourself, ever discussed it with anyone outside of your company?

A. Yes.

236 Q. With whom have you discussed it?

A. Well, I don't suppose I could recall all that, but it has been a subject of discussion on various projects on which we have been asked to quote and where we submitted our socket, and the question would come up as to whether it was similar to the Holwin socket or not.

Q. And what statements would you make?

A. We would make the statement—point out the difference between them and state that, in our opinion, our socket did not infringe the Holwin socket.

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238 Q. Have you ever discussed the Holloway patent with Crosley?

A. As a matter of fact, we did.

* * *

Q. Have you ever told anyone that the Holwin patent was no good?

A. No—well, let me just—that is rather a direct thing. I am quite sure I never used that phrase.

Q. Did you use phrases or sentences to that effect?

A. I am quite certain I haven't made any comments to that effect. I may have expressed an opinion that it
239 might not be good. As a matter of fact, that opinion would apply to our own—in fact, any patent when it comes to litigation. I pretty much confined my comments to the fact that, in our opinion, our socket avoided the features that were patented in the Holwin socket.

Q. And you made that statement to anyone who might be interested in purchasing your socket; is that correct?

A. That is right.

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